



# The Challenge of Personal Data Protection in the Internet Age— Chinese Taipei's Experience

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# Legislative Background (I)

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- ✦ the European Commission: “The Draft Council Directive on General Principles of Data Protection” (1990)
- ✦ Prohibiting the transfer of data to third party countries which “do not provide an adequate level of protection for the data”.



## Legislative Background (II)

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- ✧ Government of Chinese Taipei was pushing the Project of “Asian-Pacific Operational Hub.”
- ✧ Lack of Personal Data Protection Law was deemed a flaw for the Project.
- ✧ Chinese Taipei enacted “the Computer-Processed Personal Data Protection Law” in 1995.

# Coverage of the Law

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✦ Two categories of organization are covered by the Law:

- ◆ Public Institution: any governmental agency.
- ◆ Non-public institution: 8 regulated businesses
  - Hospital, school, telecommunication, financial, securities, insurance, mass media, and information collecting businesses.



# Principles of the Law:

## Rights for the Concerned Party

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Art. 4: Any concerned party shall not waive in advance or limit with special conditions the following rights exercisable under this Law in respect of his/her personal data:

1. Inquiry and request for review;
2. Request for duplicates;
3. Request for supplements or amendments;
4. Request for cessation of computerized processing and use; or
5. Request for deletion.

# Principles of the Law: Conditions to Collect/Process Personal Data (Public Institution)

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Art. 7: Any public institution shall not collect or computerized processing personal data unless it is for specific purposes and in conformity to any of the following circumstances:

1. Within the necessary scope of its official functions as provided by laws and/or ordinances;
2. With the written consent of the concerned party; or
3. No potential harm to be done to the rights and interests of the concerned party.



## Principles of the Law: Conditions to Use Personal Data (Public Institution)

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✠ Art. 8: The use of personal data by a public institution must be within the necessary scope of its official functions as provided by laws and /or ordinances and in conformity to the specific purposes of collection.

## Principles of the Law: Exceptions to Conditions to Use Personal Data (Public Institution) I

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✠ Art. 8: use beyond the specific purposes may be made under any of the following circumstances:

1. Expressly provided by law;
2. With legitimate cause and for internal use only;
3. To protect national security;
4. To enhance public interest;



## Principles of the Law: Exceptions to Conditions to Use Personal Data (Public Institution) II

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5. To avoid immediate danger to the life, body, freedom, or property of a concerned party;
6. Necessary for preventing grave damages to the rights and interests of others;
7. Necessary for academic research without causing harm to the major interests or others;
8. Favorable to the rights and interests of a concerned party; or
9. With the written consent of a concerned party.

# Principles of the Law: Conditions to Collect/Process Personal Data (Non-Public Institution) I

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Art. 18: Unless there is a specific purpose which has satisfied any of the following requirements, a non-public institution shall not collect or process by computer the personal data:

1. Upon the written consent from the concerned party;
2. Having a contractual or quasi-contractual relationship with the concerned party and having no potential harm to the concerned party;



## Principles of the Law: Conditions to Collect/Process Personal Data (Non-Public Institution) II

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3. Such personal data is already in the public domain and having no harm to the major interest of the concerned party;
4. For the purpose of academic research and having no harm to the major interest of the concerned party; or
5. Specifically provided by the Article 3(7)(ii) of this Law and any other laws.

# Principles of the Law: Conditions to Use Personal Data (Non-Public Institution)

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Art. 23: Use of personal data by a non-public institution shall be within the necessary scope of the specific purpose of collection; however, use beyond the specific purpose may be made under any of the following circumstances:

1. To enhance public interest;
2. To avoid immediate danger to the life, body, freedom, or property of a concerned party;
3. Where it is necessary for preventing grave damages to the rights and interests of others; or
4. With the written consent of a concerned party.



# Controversies over the Law

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- ✦ Does the Law only protect personal data processed by computer?
- ✦ Does the Law only regulate specific businesses? (the 8 regulated businesses)
- ✦ Can the Law provide adequate protection in the Internet environment?

# Implementation of the Law

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✦ The Law provides monetary compensation and criminal punishment for violation of the Law, but very few cases were ever brought to court since its enactment.

✦ Possible reasons:

- Insufficient public awareness;
- Under-coverage in the private sector; and
- High cost of a law suit.



# Challenges in the Internet Age

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- ✧ Huge volume of personal data are collected, processed, and stored via the Net.
- ✧ Privacy problems raised by electronic commerce.
- ✧ Potential violations with “creative” use of personal data, such as data mining.
- ✧ Insufficient law to regulate the environment.

# Efforts to Promote Self-Regulation

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- ✦ In 1999, Chinese Taipei published the draft of an E-Commerce Business Self-Regulatory Concord.
- ✦ At present, two private organizations, the Secure Online Shopping Association (SOSA) of Taipei and KPMG CPAs are engaged in the work of promoting Trust Marks, for which requirements include on-line privacy protection.
- ✦ Consumers who wish to resolve disputes relating to privacy protection may register their complaints with the Net Consumer Association (Net080).



# Time to Amend the Law

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- ✧ Increase of public awareness of privacy protection.
- ✧ Consensus to extend the coverage of the Law to meet the needs in the Internet age.
- ✧ Two serious incidents reported in 2002, involving illegal sale of huge volume of personal data by employees of a financial institution and a telecom company.
- ✧ Chinese Taipei initiated the process to amend the Law in 2002.

# Highlights of the Drafted Amendments

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- ✦ From partial to full coverage in the private sector.
- ✦ Abolishment of the licensing and registration mechanism.
- ✦ Emphasis of “informed” consent before use of (indirectly) collected information.
- ✦ Signifying NGO’s role in class action suits.
- ✦ Special protection to children.



# Two Questions

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✠ Who has the duty to inform in indirect data collection?

- ◆ Information provider?
- ◆ Information recipient?

✠ To what extent are personal data protected?

- ◆ Name? Address? Telephone number? Financial record? Medical record?
- ◆ Dilemma: protecting privacy v. promoting electronic commerce.

# Conclusion

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Chinese Taipei commits itself to:

- ✧ Encouraging self-regulation in the private sector.
- ✧ Adopting globally accepted principles of privacy protection in the Law.
- ✧ Promoting public awareness of privacy rights.
- ✧ Making the level of privacy protection adequate in the Internet environment.
- ✧ Striking a balance between privacy protection and other legitimate causes.